

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

In the Matter of Determination of Rates and Terms for Business Establishment Services	Docket No. 2007-1 CRB DTRA-BE (2009-2013)
In the Matter of Determination of Rates and Terms for Business Establishment Services	Docket No. 2012-1 CRB Business Establishments II (2014-2018)

DECLARATION OF MARY MARSHALL

I am counsel for SoundExchange, Inc. in Docket Nos. 2007-1 CRB DTRA-BE (2009-2013) and Docket No. 2012-1 CRB Business Establishments II (2014-2018) and I am authorized to submit this declaration in support of SoundExchange's Opening Brief Legal Brief Concerning the Meaning of 37 C.F.R. § 384.3(a).

1. I have attached as Exhibit A a true and correct copy of portions of the (public) *Web I* trial testimony of Douglas Talley from the files of Jenner & Block LLP.
2. I have attached as Exhibit B a document prepared by Jenner & Block LLP illustrating in redline form the evolution of the business establishment service rate regulation currently found in 37 C.F.R. § 384.3(a).
3. I have attached as Exhibit C a true and correct copy of portions of the (public) *Web I* trial testimony of Barry Knittel from the files of Jenner & Block LLP.
4. On May 5, 2022, I created a PDF of the web page at <https://ww1.musicchoice.com/>. A true and correct copy of that PDF is attached hereto as Exhibit D.
5. On May 5, 2022, I created a PDF of the Internet Archive's archived copy from October 11, 2008 of the web page at http://www.musicchoice.com/what_we_are/business.html, which can be accessed by visiting the following URL:

https://web.archive.org/web/20081011104414/http://www.musicchoice.com/what_we_are/business.html

A true and correct copy of that PDF is attached hereto as Exhibit E.

6. On May 5, 2022, I downloaded the Internet Archive's archived copy from January 17, 2009 of the PDF available at http://musicchoice.com/affiliate/home/pdf/Commercial_Satellite.pdf, which can be accessed by visiting the following URL:

https://web.archive.org/web/20090117084104/http://musicchoice.com/affiliate/home/pdf/Commercial_Satellite.pdf

A true and correct copy of that PDF is attached hereto as Exhibit F.

7. On May 5, 2022, I downloaded the Internet Archive's archived copy from January 17, 2009 of the PDF available at http://www.musicchoice.com/affiliate/home/pdf/BNW_Commercial_Broadband.pdf, which can be accessed by visiting the following URL:

https://web.archive.org/web/20090117184225/http://www.musicchoice.com/affiliate/home/pdf/BNW_Commercial_Broadband.pdf

A true and correct copy of that PDF is attached hereto as Exhibit G.

8. On May 5, 2022, I created a PDF of the Internet Archive's archived copy from October 23, 2018 of the web page at <http://corporate.musicchoice.com/about-us/mc-business>, which can be accessed by visiting the following URL:

<https://web.archive.org/web/20181023211244/http://corporate.musicchoice.com/about-us/mc-business>

A true and correct copy of that PDF is attached hereto as Exhibit H.

9. On May 5, 2022, I created a PDF of the Internet Archive's archived copy from September 22, 2018 of the web page at <http://corporate.musicchoice.com/about-us/products>, which can be accessed by visiting the following URL:

<https://web.archive.org/web/20180922073453/http://corporate.musicchoice.com/about-us/products/>

A true and correct copy of that PDF is attached hereto as Exhibit I.

10. On May 5, 2022, I created a PDF of the web page at <https://ww1.musicchoice.com/commercial-dealer-network>. A true and correct copy of that PDF is attached hereto as Exhibit J.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing declaration is true and correct.

Dated: May 6, 2022

Respectfully submitted,

By: /s/ Mary E. Marshall

Mary E. Marshall (D.C. Bar No. 1739058)

mmarshall@jenner.com

JENNER & BLOCK LLP

1099 New York Avenue, N.W., Suite 900

Washington, DC 20001

Tel.: 202-639-6000

Fax: 202-639-6066

Counsel for SoundExchange, Inc.

Exhibit A

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COPYRIGHT ARBITRATION ROYALTY PANEL

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In the matter of:

Digital Performance Right in
Sound Recording and Ephemeral
Recording

Docket No.
2000-9

CARP DTRA
1 & 2

CARP Hearing Room
LM-414
Library of Congress
Madison Building
101 Independence Ave, SE
Washington, D.C.

Thursday
September 6, 2001

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE

THE HONORABLE ERIC E. VAN LOON	Chairman
THE HONORABLE JEFFREY S. GULIN	Arbitrator
THE HONORABLE CURTIS E. von KANN	Arbitrator

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1 A Prior to joining DMX I was the founder and
2 chairman of a company called Digital Radio Labs which
3 had one of the first cable TV delivered digital music
4 services called Digital Plan. And for a time that
5 company was a competitor of a DMX's.

6 Q Could you describe your educational
7 background for the panel?

8 A I have a degree in electrical engineer. A
9 bachelor's degree from Penn State and a master's
10 degree from UCLA.

11 Q And, Mr. Talley, could you tell the panel
12 what the purpose of your testimony here today is?

13 A The purpose of my testimony here today is
14 to provide the panel with an overview of how DMX
15 programs and transmits its content to businesses. And
16 I also will focus on how DMX uses technology to
17 protect copyrighted content and how our technology
18 helps copyright owners promote the sales of their
19 sound recordings.

20 Q Now, Mr. Talley, today we'll be focusing
21 on your delivery of music to business establishments.
22 So to start off, could you please identify for the

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1 panel the methods by which DMX distributes music to
2 business establishments?

3 A We have several delivery techniques that
4 we use. One method is by direct satellite broadcast,
5 transmissions from satellite to small satellite on
6 businesses.

7 We also distribute our content via cable
8 TV network.

9 We also have a product that plays CDs that
10 are physically mailed to the business on a monthly
11 basis. These are special encoded and formatted CDs.

12 And we also have a product that has a hard
13 drive in it that's resident at the business that has
14 music on it that plays back music from this hard
15 drive.

16 Q Now, I'd like to go through each of these
17 delivery models in turn, but just to start things out
18 for the panel, could you please explain to us how
19 music is programmed for delivery to business
20 establishments?

21 A Well, first of all, CDs are obtained by
22 our music programming specialists that are principally

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1 located in Los Angeles. These CDs are previewed by
2 each one of the music programmers and each track is
3 categorized as to what style it belongs in, energy,
4 tempo, the mood it sets.

5 Q And what is the purpose of these
6 programming perimeters that you've identified for us?

7 A They're used to determine how often the
8 particular tracks should play, what style it should
9 play and what order it should come in the play list;
10 things like that.

11 Q Now, during the programming phase, are
12 there any copies made of the CDs?

13 A No.

14 Q Now, what happens after the programming
15 phase with the music that's been listened to by the
16 programmers?

17 A It's -- the CDs are physically sent to our
18 worldwide origination center in Denver, Colorado where
19 the first thing that happens is the content on the CD
20 that's been selected by the programmer is QCed. And
21 by that I mean we look for any pops or clicks, or
22 errors in the digital stream. If there are any, we

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1 fix them.

2 We might also adjust the volume level that
3 the recording is made at so that every song we play
4 back in our programming plays back at the same volume
5 level.

6 We also might look at the ending of the
7 song. If it has a long, long fadeout, we might trim
8 that fadeout so that it butts up seamlessly next to
9 the next song that would be played.

10 Then we -- we take that QCed content and
11 compress it into several different compression formats
12 that we use, and store it on a master file server
13 that's the main depository for all the music that we
14 program.

15 Q Now, does the programming phase that
16 you've described for us vary from distribution model
17 to distribution model?

18 A No, it's essentially the same for each
19 model.

20 Q Okay. Now you mentioned the file server
21 that's at the worldwide operations center. Could you
22 describe for us the operation of that file server?

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1 And perhaps lets start with the DBS cable model of
2 distribution.

3 A Okay. Can I have the first slide, please?

4 MS. AISTARS: For the panel's reference,
5 we'll be using the exhibit that are attached to Mr.
6 Talley's testimony as Exhibits A, B and C, and we've
7 made copies for your convenience.

8 CHAIRMAN VAN LOON: Thank you.

9 And I want to compliment both you and Ms.
10 Aistars. You've done a excellent job so far of
11 keeping your voice up, unlike some other witnesses.
12 We need for the recording purposes and to make sure
13 everybody in the room hears. Appreciate it very much.

14 THE WITNESS: Okay.

15 BY MS. AISTARS:

16 Q Okay. This is a little hard to read. But
17 before I get into the minutia of this chart, just let
18 me describe some more about the way the file server
19 operates, which is housed at the Denver origination
20 center and where all of our content originates from.

21 Basically there's a large depository of
22 songs in the compressed and encrypted format in this

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1 file server. Right now we have over a million songs
2 in that file server.

3 Each music format that we program, whether
4 it be jazz, rock, classical has a separate computer
5 that draws content from this file server. Every day
6 we load up the client computers that have the jazz or
7 the rock format designations with new play lists. And
8 the play lists, as they proceed from song-to-song, the
9 client computers draw content from the main file
10 server and play out those songs on an individual
11 basis.

12 At anyone time the client computers might
13 hold up to 8 hours of music, and that music's placed
14 on a first in/first out basis.

15 Q And how frequently is it replaced?

16 A Approximately 8 hours.

17 And then in our broadcast model, which
18 this slide illustrates, the signal is transmitted, the
19 multiplex music which in this case is the feed to our
20 main satellite, Telstar 4, consists of 120 channels of
21 music. The encrypted content is transmitted to that
22 satellite and then it comes down to various places all

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1 over the U.S.

2 The primary distribution path of this
3 encrypted music is to businesses with small one meter
4 satellite dishes and a satellite receiver. And they
5 can receive this stream music in their stores or
6 restaurant.

7 We also distribute it to cable TV
8 operators who re-inturn transmit it over their cable
9 TV networks to their subscribers. And it's received
10 on digital set top boxes where it's decrypted and
11 decompressed and turned back into analog music that
12 they can play through their speakers.

13 We also have a subcontractor called
14 Microspace located in Raleigh, North Carolina that
15 retransmits this music. Receives it from Telstar 4
16 and then retransmits it to another satellite, and it
17 in turn goes to other subscribers that have satellite
18 dishes pointed at a satellite called Galaxy 3R.

19 We are in Denver co-resident with the AT&T
20 technical operations that serves their cable networks.

21 And we give this same music to AT&T, and they in turn
22 redistribute to their cable TV subscribers throughout

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1 Q Now, when we were discussing how the
2 music is transmitted from the Denver facility to the
3 ultimate end user, I believe you made reference to a
4 client server in the Denver facility that stored the
5 content for a period of 8 hours, I believe you said.

6 A Yes.

7 Q With respect to this DBS model
8 transmission and the cable model of transmission,
9 could you tell us whether there are any other cache
10 copies of the content made to facilitate the
11 transmission?

12 A In this process there's no caching that
13 goes on. There's many buffer copies made.

14 Q And could you explain where the buffer
15 copies might be made?

16 A Well, in the process of encrypting the
17 content, compressing it, transmitting it, receiving
18 it, decompressing it, decrypting it there's several
19 buffer copies made. Playing it back, converting it
20 into analog there's several stages of this process
21 where buffer copies are made.

22 Q Now, Mr. Talley, if we could move on to

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1 some of the other models of transmission that you
2 mentioned for us. I believe you said that DMX also
3 delivers content to business establishments using a
4 hard disk based device called Axis. Could you
5 describe that device for the panel?

6 A Yes. On the next slide we show the
7 transmission path for the Axis product. What Axis is
8 is essentially a small unit the size of a set top box
9 with a large hard drive in it. When a customer orders
10 our music from us, if they want classical or jazz, we
11 send them a unit that has a hard drive preprogrammed
12 with a large amount of content that's consistent with
13 the style they ordered. A typical unit can hold up to
14 700 hours of music.

15 And then through a private network that's
16 connected between the Axis unit in the business and
17 our origination center in Denver, on a daily basis we
18 send that unit new music and new play lists for it to
19 play.

20 The unit, for all intents and purposes,
21 from the customer's standpoint works exactly like the
22 satellite receiver. They select a channel and the

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1 Q Has your network ever been hacked?

2 A Since I've been at DMX, there's never been
3 a known instance of hacking of the music network.

4 Q And, Mr. Talley, what if any programming
5 measures are taken to prevent the copying of sound
6 recordings used in DMX's services to business
7 establishments?

8 A Well, first of all, all the programming
9 software that puts together the play list has checks
10 and balances in it that complies with the sound
11 recording performance compliment.

12 Second, a very high percentage of the
13 music is programmed so that it is cross-faded from
14 song-to-song. So there's not distinct beginnings or
15 endings of each song, and this also discourages people
16 from trying to tape or hack the music.

17 Q Now, I believe that you said that another
18 purpose of your testimony here today was to talk about
19 how your technology promotes CD sales. What does DMX
20 do, if anything, on a technology front to promote the
21 sales of CDs?

22 A Several things. First of all, the

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1 equipment, the satellite receiver and the Axis unit
2 itself have readouts on them, liquid crystal displays
3 that every time a song plays it displays the artist,
4 the album and the title of the song.

5 Also through our cable TV distribution
6 whenever a song plays on screen on TV is that same
7 information; the artist, album and the title.

8 In our next generation systems that we're
9 developing now for interactive cable set tops, the
10 album art will also be on screen, and also ways for
11 the subscriber to point and click and order the album
12 on line via the cable return path.

13 We also have a website that shows for any
14 channel music that we broadcast the last 15 songs that
15 are played and the time that they're played. And so a
16 subscriber could go to our website and get information
17 on that song.

18 And we also have a large number of
19 customer service people located in Los Angeles and
20 Seattle that routinely take calls from subscribers,
21 and they're trained to answer questions about the
22 music and help people get information on how to buy

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1 it.

2 Q And why do you employ all of these
3 technologies to provide this information?

4 A Well, it's part of the appeal of the
5 service. It's a benefit that we sell. And it's
6 valued highly by our subscribers.

7 Q Now, the next area that I'd like to turn
8 to is the reasons for the use of cache and buffering
9 copies in your processes. Could you tell us what, if
10 any, effect it would have on your business if you were
11 required to account for the number of buffer and cache
12 copies that you make in any given transmission?

13 A Well, in my opinion, it's really not
14 practical. There are so many events that effect the
15 number of copies that get made. It wold be extremely
16 difficult or impossible to keep track of all these
17 things. Every time a CD is played buffer copies are
18 produced. Equipment fails, a new piece of equipment
19 has to go on line. We may have to take backup copies
20 and replicate them. It's just not practical in the
21 process of producing the music and transmitting it to
22 keep track of all these ephemeral copies.

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1 Q And would it be practical to count the
2 buffer or cache copies made in any one particular
3 transaction?

4 A No, because there are so many steps that
5 we go through. There's encryption, decryption,
6 encoding, decoding, decompressing, conversion of the
7 signal from analog -- from digital to analog. There's
8 just too many processes to keep track of.

9 There's also quite a bit of hardware and
10 software that we use that we don't control, we don't
11 design it. We buy it off the shelf. And there's
12 ephemeral copies being made in this software and
13 hardware. And we would have no way to determine how
14 many of these copies are made in this hardware and
15 software.

16 Q And when you were providing some examples
17 of what you mean by cache and buffer copies for the
18 panel, you were fairly specific in identifying, for
19 instance, in the CD playback an example of how many
20 ephemeral copies might be made. Is this something
21 that's standard or is this something that might vary
22 from device-to-device or technology-to-technology?

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1 A It can vary from device-to-device. It can
2 vary from how the equipment is used by the operators.

3 We may have an editor that may have to
4 edit a song several times before it's right for air
5 play.

6 I couldn't tell you how many times a
7 particular song would be played back on a CD player or
8 not played back.

9 Q And why does DMX employ technologies that
10 require the making of buffer and cache copies?

11 A We really have no option. We're dealing
12 with digital media today. This is incidental to the
13 process of producing quality content and delivering it
14 to our customers.

15 Q And what if any benefits does the use of
16 this technology which results in the making of buffer
17 or cache copies afford DMX?

18 A Well, there's some value to us in terms of
19 efficiency. But there's also value to the copyright
20 owner from the standpoint that we can encrypt the
21 content to a much higher degree and protect it to a
22 much higher degree than we could if it was in an

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1 models that AEI had with Pro Pac and Pro CD. Are you
2 familiar with those?

3 A Uh-huh.

4 Q Say yes.

5 A Yes.

6 Q And the Pro Pac and Pro CD is what you're
7 describing here in your on premises model? Let me
8 rephrase that.

9 When you described the on premises model
10 were you including within that what has been referred
11 to as Pro Pac and Pro CD?

12 A What I was describing in this diagram was
13 what DMX has been doing. This doesn't cover what AEI
14 has been doing.

15 Q All right. Let's focus then for a moment
16 on the on premises model. Is there any difference in
17 the model that you described on the one hand and the
18 Pro Pac and the Pro CD models on the other hand?

19 A No, they're technically -- they're
20 similar.

21 Q Okay. And are you familiar with the Pro
22 Fusion method of providing -- of servicing your

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1 customers, correct?

2 A Yes.

3 Q And when you described the Axis technology
4 here, is there any difference between the Axis
5 technology on the one hand and the Pro Fusion
6 technology on the other hand?

7 A The only difference is that the Pro Fusion
8 technology presently uses CD ROMs to update it on a
9 monthly basis. The Axis equipment connects
10 electronically to the server in Denver and is updated
11 by this electronic path.

12 Q I see. And when Pro Fusion uses CD ROMs, I
13 take it that CD ROMs are mailed?

14 A Yes.

15 Q All right. And lastly, on the broadcast
16 model, is there any difference between the DMX
17 broadcast on the one hand and the AEI broadcast model
18 on the other hand?

19 A The only difference is the number of
20 channels that are transmitted. Also the DMX broadcast
21 model has a lot more music transmitted than the AEI
22 model. And the AEI equipment also broadcasts what we

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1 call in store messaging; announcements that the store
2 may want to insert between the music. The DMX
3 equipment doesn't do that.

4 Q I take it for all of the models that
5 you've described here, that initially the CDs are
6 placed into a digital depository that is located in
7 Denver, is that right?

8 A Yes.

9 Q Let me go back to your broadcast model
10 again. And if I could just ask you to look at the
11 chart that you prepared for that broadcast model. Do
12 you have that before you?

13 A Yes.

14 Q Just incidentally, whose chart do you
15 think is better, yours or mine?

16 A I haven't seen yours.

17 Q That's okay. They put this in just to
18 embarrass me, you know that.

19 All right. Well, just focusing on the
20 broadcast -- oh, one other thing, too. You talked in
21 terms of buffer copies and cache copies, do you recall
22 that?

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1 A Yes.

2 Q At one point in your oral testimony you
3 also referred to ephemeral copies, do you recall that?

4 A Yes.

5 Q Is your reference to ephemeral copies
6 meant to meant to include buffer and cache copies?

7 A Yes.

8 Q Does it include anything other than buffer
9 and cache copies?

10 A No.

11 Q Okay. So if I use the term ephemeral
12 copies, we could use that as a term synonymous with
13 both buffer and cache copies, correct?

14 A Yes.

15 Q Okay. All right. Turning to your U.S.
16 broadcast model here, can you tell me at what stages
17 in the process here ephemeral copies are made?

18 A Every stage from the transmission to the
19 reception. There are many, many, many places where
20 this happens, where ephemeral copies are made.

21 Q Okay. Well, let's just if we could go
22 through the whole process.

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1 A Okay.

2 Q And identify each of the stages here. I
3 gather in the first step is that the physical CDs are
4 copied into the digital repository, correct?

5 A Yes.

6 Q Okay. Do you consider those copies to be
7 ephemeral copies?

8 A Yes.

9 Q And those copies are periodically purged
10 from the digital repository, is that right?

11 A Yes.

12 Q Are any copies maintained there on a
13 permanent basis?

14 A They could be. The purge -- how often we
15 purge it is a variable.

16 Q What does it vary at?

17 A How often we play the music, whether it's
18 needed on a regular basis or it's not needed.

19 Q There is no set policy that everything
20 within the digital repository must be purged within a
21 specified period of time?

22 A No.

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1 Q Okay. Now, when copies are placed in the
2 digital repository, is there more than one copy made
3 of each CD?

4 A No.

5 Q And you would consider the copying of a
6 single CD into that digital repository to be either a
7 buffered copy or a cache copy?

8 A Well, yes. Just let me clarify my last
9 answer.

10 In the process of storing a copy, an
11 ephemeral copy into the master server, there's several
12 processes that we go through first to get it there.
13 There's QCing, there's a slight amount of editing that
14 might be done, there's volume leveling, there's
15 encryption, compression. Throughout all these
16 processes before it even gets on the server, there's
17 ephemeral copies made.

18 Q And those copies are made at your
19 operation center there in Denver?

20 A Yes.

21 Q Once all of that process is gone through
22 and you're actually putting the copy into the digital

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1 repository, is the copy that goes into the digital
2 repository considered to be either a cache copy or a
3 buffer copy?

4 A Yes.

5 Q Which one is it or is it both?

6 A I would call it a cached copy.

7 Q And why would you call it a cached copy?

8 A Because it's retained for unspecified
9 period of time.

10 Q All right. Sticking with your broadcast
11 model, we've got the CD in the digital repository.
12 Where does it go next?

13 A Well, we have what we call client playback
14 computers that on command from the individual play
15 lists that are loaded into these client computers,
16 they draw music from the master depository and decode
17 it and play it out of those client computers.

18 Q Physically where are these client playback
19 computers located?

20 A They're in the same room as the master
21 file server in Denver.

22 Q And how many -- in Denver, right?

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1 A Yes.

2 Q And how many such computers are there?

3 A Approximately 120.

4 Q Is it like one computer for each channel
5 of programming that goes up to the satellite, is that
6 right?

7 A Yes.

8 Q And so you'd have one computer that might
9 be devoted to a jazz channel and another one that
10 might be devoted to a classical channel, is that
11 right?

12 A Yes.

13 Q Now do you consider the copies that reside
14 in that playback computer to be either cache or buffer
15 copies?

16 A Well, in normal operation everything in
17 that computer is replaced on a first in/first out
18 basis on a regular time interval. So under normal
19 circumstances I would call that caching.

20 If there's a failure of the main server or
21 if the main server goes down, what we do is we start
22 to loop the music from the client computer. And in

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1 that mode then it operates like a cache. It keeps
2 playing back the last 8 hours of music until we fix
3 the problem with the main server.

4 Q Okay. What's the next step then after the
5 -- you've got the different tracks in the client
6 playback computer. Are they then transmitted from
7 that computer up to satellite?

8 A Right, but before that happens those
9 tracks are encrypted, they're compressed again into
10 the compression format used on the satellite system,
11 which may be different than the -- and in many cases
12 is different than the compression format we use to
13 store it on the server.

14 They're also multiplexed together so that
15 all 120 channels is transmitted in a blanket format.
16 And in all those processes there are ephemeral copies
17 made.

18 Q Okay. After ephemeral copies are made,
19 then they are actually transmitted up to the
20 satellite, correct?

21 A Yes.

22 Q And that's the Telstar 4 satellite that

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1 Head In the Sky, and it's a technical broadcast
2 facility that AT&T has located at the same facility
3 that our studios are at in Denver. And what they do is
4 receive content from many different sources; video and
5 audio providers. And then they reencrypt it, they
6 remultiplex it, they recompress it into the format
7 that's compatible with all the AT&T cable system and
8 set top boxes. And then they retransmit it to their
9 subscribers in that format.

10 Q All right. This is the digital service
11 that the cable operators offer, correct?

12 A If you have AT&T digital cable, you have
13 this HITS service.

14 Q Okay. Now your transmission from Denver
15 to HITS is done via microwave?

16 A No. Actually, it's done by a wire.

17 Q Fiber optics or cable?

18 A It's coax cable.

19 Q Coax cable. Okay.

20 In the process of taking the programming
21 there from your operations in Denver and getting it
22 over to HITS, are any ephemeral copies made?

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1 A No.

2 Q Okay. When HITS receives that programming
3 and transmits it off to various cable operators, are
4 any ephemeral copies made there?

5 A Yes.

6 Q And are these cache copies or buffer
7 copies, or both?

8 A I would call them buffer copies.

9 Q Okay. Once the cable operators receive
10 them, they will then further transmit them to your
11 business customers, correct?

12 A Yes.

13 Q Are there any ephemeral copies made in
14 that process there?

15 A Yes.

16 Q And, again, are these cache or buffer
17 copies?

18 A I would call them buffer copies.

19 Q Okay. Why would you call them buffer
20 copies?

21 A Because there are several steps where the
22 signal is received, decoded, decrypted, converted from

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1 digital to analog.

2 Q Okay. I guess as you said in your
3 broadcast model there are a lot of different ephemeral
4 copies that are made, correct?

5 A Yes.

6 Q And if you can't make those ephemeral
7 copies, you can't use this broadcast model, can you?

8 A That's correct.

9 Q Okay. Just turn for a second to the on
10 premises model. Are there ephemeral copies that are
11 created in the course of providing your services via
12 the on premises model?

13 A Yes.

14 Q All right. Can you tell us again where
15 would the first set of ephemeral copies be made?

16 A Are you referring to the Axis slide or --

17 Q No, I'm referring to the on premise model.

18 A On premises. Okay.

19 Q Which would also be like Pro Pac or Pro
20 CD. The third slide.

21 MS. AISTARS: Actually, I think he
22 testified that this represents DMX's activities and

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Exhibit B

History of Gross Proceeds Definition

Web I CARP

Report of the Copyright Arbitration Royalty Panel in Docket No. 2000-9 at B-7 (Feb. 20, 2002).

(f) Business Establishment Ephemeral Recordings Royalty

For the making of unlimited numbers of ephemeral recordings in the operation of broadcast services pursuant to the Business Establishment exemption contained in 17 U.S.C.

§ 114(d)(1)(C)(iv), a Business Establishment Service shall pay a § 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such broadcast service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

- (i) for classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and
- (ii) for all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

Web I Librarian

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings and Ephemeral Recordings, 67 Fed. Reg. 45,240, 45,273-74 (July 8, 2002)

37 C.F.R. § 261.2

Gross proceeds mean all fees and payments, as used in § 261.3(d), including those made in kind, received from any source before, during or after the License term which are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on the exclusive rights specified in section 114(d)(1)(c)(iv).

37 C.F.R. § 261.3(d)

(~~f~~d) Business Establishment Ephemeral Recordings Royalty. For the making of ~~unlimited~~ any numbers of ephemeral recordings in the operation of ~~broadcast~~ any services pursuant to the Business Establishment exemption contained in 17 U.S.C. § 114(d)(1)(C)(iv), a Business Establishment Service shall pay a ~~§ section~~ 112(e) ephemeral recording royalty equal to ten percent (10%) of the Licensee's annual gross proceeds derived from the use in such ~~broadcast~~ service of the musical programs which are attributable to copyrighted recordings. The attribution of gross proceeds to copyrighted recordings may be made on the basis of:

(~~i~~1) ~~For~~ classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, ~~and~~

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

2003 Settlement

Digital Performance Right in Sound Recordings and Ephemeral Recordings, 69 Fed. Reg. 5693, 5698 (Feb. 6, 2004).

37 C.F.R. § 262.3(a)(3)

(d) ~~Business Establishment Ephemeral Recordings Royalty Services.~~ For the making of any number of ~~e~~Ephemeral ~~r~~Recordings in the operation of a service pursuant to the ~~limitation on exclusive rights specified by Business Establishment exemption contained in~~ 17 U.S.C. 114(d)(1)(C)(iv), a Licensee that is a Business Establishment Service shall pay a ~~section 112(e) ephemeral recording royalty equal to ten percent (10%) of the such~~ Licensee's annual "~~g~~Gross ~~p~~Proceeds" derived from the use in such service of the musical programs ~~which that~~ are attributable to copyrighted recordings. [Definition relocated and inserted] "Gross pProceeds" as used in paragraph (a)(3) of this section means all fees and payments, ~~as used in § 261.3(d),~~ including those made in kind, received from any source before, during or after the License ~~term~~ Period ~~which that~~ are derived from the use of copyrighted sound recordings pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on ~~the~~ exclusive rights specified in 17 U.S.C. 114(d)(1)(~~e~~C)(iv). The attribution of ~~g~~Gross ~~p~~Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

2007 Settlement (BES I)

Determination of Rates and Terms for Business Establishment Services, 73 Fed. Reg. 16,199, 16,199-200 (Mar. 27, 2008).

37 C.F.R. § 384.3(a)

(3a) ~~Business Establishment Services Basic royalty rate.~~ For the making of any number of Ephemeral Recordings in the operation of a service pursuant to the ~~Business Establishment exemption contained in~~ limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv), a Licensee ~~that is a Business Establishment Service~~ shall pay 10% of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings. "Gross Proceeds" as used in ~~paragraph (a)(3) of this section~~ means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to

the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

2012 Settlement (BES II)

Determination of Rates and Terms for Business Establishment Services, 78 Fed. Reg. 66,276, 66,277 (Nov. 5, 2013)

37 C.F.R. § 384.3(a)

(a) Basic royalty rate. For the making of any number of Ephemeral Recordings in the operation of a ~~service pursuant to the limitation on exclusive rights specified by 17 U.S.C. 114(d)(1)(C)(iv)~~ Business Establishment Service, a Licensee shall pay ~~10%~~ 12.5% of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings. "Gross Proceeds" as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(1) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program, and

(2) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

2018 Settlement (BES III)

Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III), 83 Fed. Reg. 60,362, 60,363 (Nov. 26, 2018)

37 C.F.R. § 384.3(a)

(a) Basic royalty rate. (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay ~~12.5%~~ a royalty equal to the following percentages of such Licensee's "Gross Proceeds" derived from the use in such service of musical programs that are attributable to copyrighted recordings:

[Table inserted]

Year	Rate
2019	12.5
2020	12.75
2021	13.0
2022	13.25
2023	13.5

(2) “Gross Proceeds” as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(4i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program; and

(2ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

2019 MMA Amendment

Copyright Royalty Board Regulations Regarding Procedures for Determination and Allocation of Assessment to Fund Mechanical Licensing Collective and Other Amendments Required by the Hatch-Goodlatte Music Modernization Act, 84 Fed. Reg. 32,296, 32,313 (July 8, 2019)

37 C.F.R. § 384.3(a)

(a) Basic royalty rate. (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay a royalty equal to the following percentages of such Licensee’s “Gross Proceeds” derived from the use in such service of musical programs that are attributable to ~~copyrighted~~ recordings subject to protection under title 17, United States Code:

Year	Rate
2019	12.5
2020	12.75
2021	13.0
2022	13.25
2023	13.5

(2) “Gross Proceeds” as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are

derived from the use of ~~copyrighted~~ sound recordings subject to protection under title 17, United States Code during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to ~~copyrighted~~ recordings subject to protection under title 17, United States Code may be made on the basis of:

(4*i*) For classical programs, the proportion that the playing time of ~~copyrighted~~ classical recordings subject to protection under title 17, United States Code bears to the total playing time of all classical recordings in the program; and

(2*ii*) For all other programs, the proportion that the number of ~~copyrighted~~ recordings subject to protection under title 17, United States Code bears to the total number of all recordings subject to protection under title 17, United States Code in the program.

Exhibit C

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COPYRIGHT OFFICE

+ + + + +

COPYRIGHT ARBITRATION ROYALTY PANEL

+ + + + +

In the matter of:

Digital Performance Right in
Sound Recording and Ephemeral
Recording

Docket No.
2000-9

CARP DTRA
1 & 2

CARP Hearing Room
LM-414
Library of Congress
Madison Building
101 Independence Ave, SE
Washington, D.C.

Wednesday
September 5, 2001

The above-entitled matter came on for hearing,
pursuant to notice, at 9:00 a.m.

BEFORE

THE HONORABLE ERIC E. VAN LOON	Chairman
THE HONORABLE JEFFREY S. GULIN	Arbitrator
THE HONORABLE CURTIS E. von KANN	Arbitrator

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1 has the labels sharing in a percentage of AEI's music
2 revenue. That revenue is when divided according to
3 the number of songs that we use from that various
4 label and payments are made back to them by the number
5 of tracks that we use in specific programs and the
6 balances held in an account to be used with that
7 label, that's their money, in conjunction to other
8 promotional activities that they see, they deem to be
9 fit in conjunction with us or our customers.

10 Q Okay, we've talked about the relationship
11 with the RIAA and AEI in terms of the contractual
12 relationship and what you've described as the
13 royalties or the license fees. Are there any other
14 major cost centers that come out of the relationship
15 between RIAA and AEI?

16 A Technology.

17 Q Could you explain?

18 CHAIRMAN VAN LOON: Before we go to that,
19 could I just ask a clarifying question. The bottom of
20 page 14, top of 15, you say the agreements establish
21 promotional funds and it's a percentage of gross music
22 service fees received by AEI. So when you're serviced

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1 by the labels, it's not just the provision of music
2 CDs, things of that nature, am I understanding that to
3 say that you receive funds from them?

4 THE WITNESS: No. Those funds are that
5 amount of money that we take as a percentage from our
6 revenue, our gross revenue of music sales. That money
7 is held in -- it's a little complicated, but I'll go
8 through it if I could slowly. You take all the
9 billings that we have from music to our accounts, a
10 certain percentage of that revenue is taken and held
11 as a royalty payment to the marketing fund labels, the
12 promotion labels. Part of that fund is then reduced
13 by certain -- that amount is reduced by other
14 royalties, ASCAP, BMI, SESAC, Harry Fox, etcetera.
15 Then that sum is divided by the number of tracks,
16 music songs that you use and that breaks out to what
17 the pro rata share would be for that record label.
18 Part of that pro rata share is paid to them in a check
19 at \$6 for each song that we use within our programs.
20 The balance is held for them to use as they see fit in
21 a promotional fund. We sometimes take ideas to them,
22 hey, there's this opportunity with regards to American

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1 Airlines, if you want to put this video on, we can
2 service that for you. They say yes or no. It's their
3 funds to choose how they want to use it as a part of a
4 promotional fund. In some cases we've supported a
5 tour, part of a tour, put out \$100,000 as advance to
6 put an act out on the road that actually in that case
7 turned out to be very successful for the act, but it's
8 their money to be used in promotional aspects in
9 conjunction with us.

10 CHAIRMAN VAN LOON: And this fund is
11 created then essentially as a percentage of your gross
12 revenues, if you will?

13 THE WITNESS: From music, that's
14 absolutely right.

15 CHAIRMAN VAN LOON: From serving 120,000
16 business establishments?

17 THE WITNESS: That's correct, that's
18 right.

19 ARBITRATOR GULIN: Mr. Knittel, let me ask
20 you a couple follow-up questions. Now as to the other
21 90 percent, those are -- those fees you keep? I'm
22 sorry, I didn't mean to use the term -- the amount

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Exhibit D



Where Do You Want Your Music To Be?



Unique Variety

The Broadcast House offers over 100 digital audio channels from Music Choice, the Largest Supplier of Digital Music



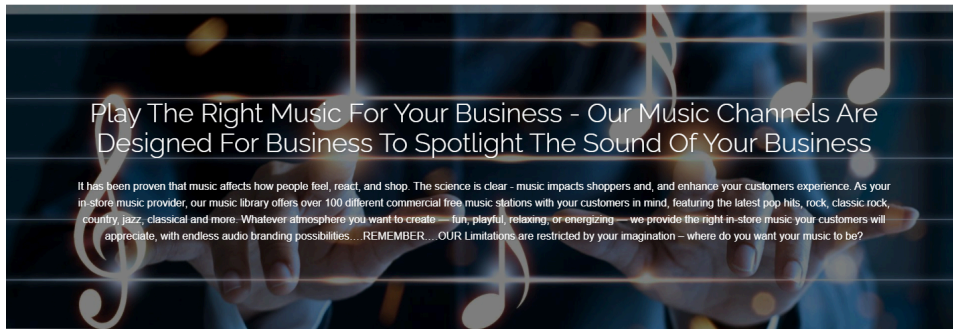
No Interruptions

While you focus on the unique needs of your business, we're always refining and adding to our vast music library so that your music is always updated and seamlessly streaming



Endless Possibilities

Dayparting allows you to schedule music by zone, time, and day of the week. Our music curators have designed a targeted music selection to reach your key demographics



Play The Right Music For Your Business - Our Music Channels Are Designed For Business To Spotlight The Sound Of Your Business

It has been proven that music affects how people feel, react, and shop. The science is clear - music impacts shoppers and, and enhance your customers experience. As your in-store music provider, our music library offers over 100 different commercial free music stations with your customers in mind, featuring the latest pop hits, rock, classic rock, country, jazz, classical and more. Whatever atmosphere you want to create — fun, playful, relaxing, or energizing — we provide the right in-store music your customers will appreciate, with endless audio branding possibilities. REMEMBER... OUR Limitations are restricted by your imagination — where do you want your music to be?

Have You Downloaded The Music Zeppelin App Yet?



With the Music Zeppelin app you will have access to all **Music Choice** commercial channels to listen on the go, in your car, at the gym, or more importantly, in your business.



"Our owner was looking for a cost effective service and yours fit our needs. We are saving \$ by switching to you instead of using other providers, the music choices are far greater then getting a memory stick every few months and hearing the same music over and over. You have used our manager guides to create in store advertising of our products that our guests may not know about. Your features are much better and it is easy to use the online services to change music throughout the weeks"

Mike R
Operations Supervisor



Exhibit E



Welcome To Music Choice



Music Choice, the perfect answer to the commercial business owner's needs:

- Satellite or Internet Distribution. (view [Front](#) and [Back](#) of Music Choice High-Speed Internet System Spec Sheet)
- 24/7 Music - No commercials, no DJ talk, no interruptions. View the full Music Choice commercial business channel offering below (in PDF format):

[Satellite Channel Lineup \(color\)](#)
[Satellite Channel Lineup \(b&w\)](#)

[High-Speed Internet Channel Lineup \(color\)](#)
[High-Speed Internet Channel Lineup \(b&w\)](#)

- What you want to hear, when you want to hear it.
 - **Seasonal holiday programming** 10 times annually - no additional cost.
 - National Dealer Network - Provides all your audio hardware and installation needs at the best prices.



[View the front of our Music Choice via Satellite Brochure](#)

[View the inside of our Music Choice via Satellite Brochure](#)

[View the front of our Music Choice via High-Speed Internet Brochure](#)

[View the inside of our Music Choice via High-Speed Internet Brochure](#)

Check out our [Dealer Locator](#)! Contact your local Music Choice dealer to get Music Choice installed at your business. Simply enter your zip code below, then click the "Find" button to display the results.

Zip Code:

[You can also contact your local cable operator's commercial department.](#)

[Contact us](#) if you are interested in becoming a Commercial Dealer.

[Contact us](#) regarding your video and music programming needs. Special programs in effect for Music Choice commercial programming:

- 52 Channels of clear CD quality programming
- The best commercial video/audio programming available
- Programs for national accounts or multi-unit locations
- National Dealer network to meet service and installation needs

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Exhibit F

via satellite

Music Choice Commercial

For more on Music Choice for business please visit www.musicchoice.com

Ch. 240 Adult Alternative (TV-MA)

Not too loud, not too soft... Cutting edge artists and their songs that will entertain, as well as inspire.

Ch. 241 Today's Country (TV-PG)

Enjoy the biggest hits from today's hottest country stars.

Ch. 242 Classic Country (TV-PG)

Enjoy Country Music's Prime Time with the songs you love from the Pioneers and the Legends of Country.

Ch. 243 Bluegrass (TV-PG)

Get that high-lonesome sound straight off the mountain from the greatest pickers and innovators of the genre.

Ch. 247 Hip-Hop and R&B (TV-PG)

Today's popular Hip Hop and R&B music, exclusive remixes, and the Music Choice® Mixtape.

Ch. 248 Classic R&B (TV-PG)

Get down with Classic R&B, funk, soul, and Motown from the late '60s, '70s, and early '80s.

Ch. 249 R&B Soul (TV-PG)

Urban adult music from yesterday and today, plus sultry slow jams for the grown and sexy.

Ch. 253 Arena Rock (TV-PG)

Grab your can of aerosol, squeeze into your acid washed jeans, and raise your lighter to these hair-teasing tunes!

Ch. 254 Classic Rock (TV-PG)

Catch the hits and deep album tracks from the pioneers who helped defined the genre.

Ch. 255 Retro-Active (TV-PG)

Totally awesome tunes from the eras of punk, post-punk, New Wave, and beyond.

Ch. 259 Dance (TV-PG)

Catch a non-stop party with the biggest club remixes, house, progressive & trance tracks with DJ mixes you won't hear anywhere else!

Ch. 260 Lite Hits (TV-PG)

A mix of slow and mid-tempo pop hits from today and the '90s, along with favorites from the '80s and '90s.

Ch. 261 Adult Top 40 (TV-PG)

A mature mix of today's pop and rock hits, along with favorites from the '80s and '90s.

Ch. 262 Hit List (TV-PG)

The best of today's pop, rock, and hip-hop, straight off the charts!

Ch. 263 Party Favorites (TV-PG)

Get the party started and keep it going with a mix of up-tempo tracks from the past and present!

Ch. 264 '80s (TV-PG)

Oh my gosh, listen to totally tubular hit songs of the decade!

Ch. 265 '70s (TV-PG)

Get groovy with the best of pop, rock, and soul from one of music's most diverse decades!

Ch. 266 Solid Gold Oldies (TV-PG)

Listen as Rock n' Roll's most prolific era comes alive with the artists and the songs that shaped the lives of an entire generation.

Ch. 269 Singers & Standards (TV-PG)

Rediscover the Great American Songbook in a tasteful mix of the best recordings of those timeless classics we all fell in love with.

Ch. 270 Big Band & Swing (TV-PG)

Listen to the swinging sounds of the Big Band era alongside the current bands that keep the music alive for today's audiences.

Ch. 271 Easy Listening (TV-G)

Relax with the easy sound of great instrumentals as performed by string orchestras and soloists from around the world.

Ch. 274 Contemporary Instrumentals (TV-G)

Relax with the gentle melodies of contemporary jazz, light Classical, and modern instrumentals.

Ch. 275 Smooth Jazz (TV-PG)

Experience an eclectic blend of soulful and polished grooves mixed with a myriad of pop and rock inspirations

Ch. 276 Jazz (TV-PG)

Discover the truth and essence of jazz with tracks from throughout Jazz music's rich history.

Ch. 277 Blues (TV-PG)

Get your mojo workin' with everything blues - from the electrifying Chicago sound to the Mississippi Delta!

Ch. 278 Reggae (TV-PG)

Groove to the positive cultural roots of reggae, ska, dancehall, and soca, intertwine in a blend of sunny Caribbean rhythms.

Ch. 279 Soundscapes (TV-G)

Caress, energize, and expand the soul with this rich mix of new age, atmospheric, and world-positive music.

Ch. 280 Classical Masterpieces (TV-G)

Hear the great masterpieces of Classical Music as performed by the world's greatest musicians presented with a special blend of newly rediscovered surprises spanning 500 years.

Ch. 281 Light Classical (TV-G)

A tasteful mix of all-time Classical favorites that everyone knows and loves and the delicate styling of solo instrumentalists, and chamber ensembles from the baroque era to the present.

Ch. 282 Rock (TV-PG)

Rock served straight up with no frills.

Ch. 283 Contemporary Christian (TV-G)

Enjoy a wide variety of today and yesterday's most inspiring and uplifting Christian music

Ch. 284 Sounds of the Seasons (TV-PG)

Enjoy the holidays with songs that capture the spirit of every season!

Ch. 285 Romances (TV-PG)

Fall in love with ballads and boleros by the most popular Latin artists of today and yesterday.

Ch. 286 Taste of Italy (TV-G)

Experience the rich culture of Italy with an eclectic mix of Italian and Italian-American favorites.

Ch. 290 Reggaeton (TV-PG)

Feel the rhythm with the latest Latin R&B, rap, reggaeton, and hip-hop hits!

Ch. 291 Salsa y Merengue (TV-PG)

Caliente! Check out the hottest of today's hits and all-time classics from your favorite artists.

Ch. 292 Rock 'En Español (TV-PG)

Experience the hard-hitting, cutting edge sounds of today's hottest Spanish language rock artists.

Ch. 293 Pop Latino (TV-PG)

(Mueve lo) Move to the greatest chart-topping hits from today's hottest Latin artists.

Ch. 294 Mexicana (TV-PG)

Capture the essence of Mexican music with a rich variety of traditional styles featuring a perfect blend of Ranchera, Banda and Mariachi.

Ch. 295 Tejano (TV-PG)

Get that down home country music feel with the fusion of Latin influences as performed by today's most talented Tejano artists.

MUSIC CHOICE®

Exhibit G

via broadband Music Choice Commercial

For more on Music Choice for business please visit www.musicchoice.com

Adult Alternative (TV-MA)

Not too loud, not too soft... Cutting edge artists and their songs that will entertain, as well as inspire.

Today's Country (TV-PG)

Enjoy the biggest hits from today's hottest country stars.

Classic Country (TV-PG)

Enjoy Country Music's Prime Time with the songs you love from the Pioneers and the Legends of Country.

Bluegrass (TV-PG)

Get that high-lyonesome sound straight off the mountain from the greatest pickers and innovators of the genre.

Hip-Hop and R&B (TV-PG)

Today's popular Hip Hop and R&B music, exclusive remixes, and the Music Choice® Mixtape.

Classic R&B (TV-PG)

Get down with Classic R&B, funk, soul, and Motown from the late '60s, '70s, and early '80s.

R&B Soul (TV-PG)

Urban adult music from yesterday and today, plus sultry slow jams for the grown and sexy.

Arena Rock (TV-PG)

Grab your can of aerosol, squeeze into your acid washed jeans, and raise your lighter to these hair-teasing tunes!

Classic Rock (TV-PG)

Catch the hits and deep album tracks from the pioneers who helped defined the genre.

Retro-Active (TV-PG)

Totally awesome tunes from the eras of punk, post-punk, New Wave, and beyond.

Dance (TV-PG)

Catch a non-stop party with the biggest club remixes, house, progressive & trance tracks with DJ mixes you won't hear anywhere else!

Lite Hits (TV-PG)

A mix of slow and mid-tempo pop hits from today and the '90s, along with favorites from the '80s and '90s.

Adult Top 40 (TV-PG)

A mature mix of today's pop and rock hits, along with favorites from the '80s and '90s.

Hit List (TV-PG)

The best of today's pop, rock, and hip-hop, straight off the charts!

Party Favorites (TV-PG)

Get the party started and keep it going with a mix of up-tempo tracks from the past and present!

'80s (TV-PG)

Oh my gosh, listen to totally tubular hit songs of the decade!

'70s (TV-PG)

Get groovy with the best of pop, rock, and soul from one of music's most diverse decades!

Solid Gold Oldies (TV-PG)

Rock around the clock with the biggest hits of the '50s and '60s

Singers & Standards (TV-PG)

Rediscover the Great American Songbook in a tasteful mix of the best recordings of those timeless classics we all fell in love with.

Big Band & Swing (TV-PG)

Listen to the swinging sounds of the Big Band era alongside the current bands that keep the music alive for today's audiences.

Easy Listening (TV-G)

Feel the warmth with string orchestras and great instrumentals.

Contemporary Instrumentals (TV-G)

Relax with the gentle melodies of contemporary jazz, light Classical, and modern instrumentals.

Smooth Jazz (TV-PG)

Experience an eclectic blend of soulful and polished grooves.

Jazz (TV-PG)

Discover the truth and essence of jazz with tracks from throughout Jazz music's rich history.

Blues (TV-PG)

Get your mojo workin' with everything blues - from the electrifying Chicago sound to the Mississippi Delta!

Reggae (TV-PG)

Groove to the positive cultural roots of reggae, ska, dancehall, and soca, intertwine in a blend of sunny Caribbean rhythms.

Soundscapes (TV-G)

Caress, energize, and expand the soul with this rich mix of new age, atmospheric, and world-positive music.

Classical Masterpieces (TV-G)

Enjoy Classical masterpieces from the world's best musicians.

Light Classical (TV-G)

Classical orchestral favorites together with solo instrumentalists and chamber ensembles.

Rock (TV-PG)

Rock served straight up with no frills.

Contemporary Christian (TV-G)

Enjoy a wide variety of today and yesterday's most inspiring and uplifting Christian music

Sounds of the Seasons (TV-PG)

Enjoy the holidays with songs that capture the spirit of every season!

Romances (TV-PG)

Fall in love with ballads and boleros by the most popular Latin artists of today and yesterday.

Taste of Italy (TV-G)

Experience the rich culture of Italy with an eclectic mix of Italian and Italian-American favorites.

Reggaeton (TV-PG)

Feel the rhythm with the latest Latin R&B, rap, reggaeton, and hip-hop hits!

Salsa y Merengue (TV-PG)

Caliente! Check out the hottest of today's hits and all-time classics from your favorite artists.

Rock 'En Español (TV-PG)

Experience the hard-hitting, cutting edge sounds of today's hottest Spanish language rock artists.

Pop Latino (TV-PG)

Move to chart-topping hits from today's hottest Latin artists.

Mexicana (TV-PG)

Mexican music with a rich variety of traditional styles.

Tejano (TV-PG)

Get that down home country music feel with the fusion of Latin influences as performed by today's most talented Tejano artists.

Electronica (TV-MA)

Experience hot electronica tracks and exclusive DJ mixes.

Rap (TV-MA)

Today's hottest Hip Hop and uncensored rap!

Alternative (TV-MA)

Hear the tracks that continue to define the modern rock sound.

Metal (TV-MA)

Prepare yourself for an uncensored aural audio assault!

Americana (TV-PG)

The Alt side of country from Texas grit to Nashville edge and everything in between.

Kidz Only! (TV-G)

The coolest pop hits and sing-a-long songs!

Gospel (TV-G)

Lift your spirit with traditional & contemporary gospel music.

Show Tunes (TV-PG)

Get a front row seat for the best of Broadway and musical theater!

'90s (TV-PG)

Jam out to the hottest pop, rock, and urban hits of the decade.

R&B Hits (TV-PG)

Hear the very best R&B hits of the '80s, '90s, and now.

Opera (TV-G)

Experience the tragedy, comedy, and romance of classic operas and vocals.

**Music
CHOICE**

Exhibit H



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MC FOR BUSINESS

Harness the power of music to meet any number of business goals, while minimizing expenses. Music Choice can help you create the proper ambiance for your business by offering you over 50 channels of CD quality music to choose from. No CD's to change or buy - no unwanted DJ Radio talk or advertising - just pure, uninterrupted music. Added benefits include the ability to lock out unwanted channels and control the music for multiple sites from one location - choose day part or week part genres up to six time daily - and no additional cost for seasonal programming. For more information on how you can get Music Choice for your business, contact your local cable provider or the Broadband Radio Network at 888-266-4229.



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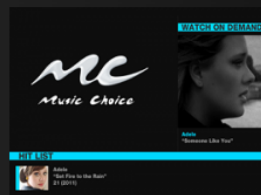
Take Back Your TV with Music Choice Play! Music Choice Play offers users a unique live television and social media experience. Viewers interact with Music Choice Play through Twitter by voting for what videos get played and tweeting live with their favorite artists on shows like "You & A", "Ultimate Guest List", and "The In Crowd". The network features full screen music videos from today's hottest artists like Bruno Mars, Miley Cyrus, Macklemore, P!nk, One Direction and Justin Timberlake.

MUSIC CHOICE VIDEO ON DEMAND



Looking for hundreds and hundreds of the hottest music videos to watch whenever you want on TV and online? Go to Music Choice On Demand!

MUSIC CHOICE MUSIC CHANNELS



Turn up the volume and listen to your favorite music without interruptions on any of the 46 music channels from Music Choice. With dozens of music channels to choose from, there is a channel for every music taste! Whether you like today's hottest music, or prefer hits from the past, you will find just what you are looking for with our selection of Urban, Pop, Rock, Country, Christian, Kids, Classical and Oldies channels. While listening to your favorite non-stop music, fill your head with artist facts that only Music Choice offers!



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Commercial Dealer Network

Harness the power of music to meet any number of business goals, while minimizing expenses. Music Choice can help you create the proper ambiance for your business by offering you almost 200 channels of quality music to choose from. Added benefits include the ability to lock out unwanted channels and control the music for multiple sites from one location - choose day part or week part genres up to six time daily - and no additional cost for seasonal programming. For more information on how you can get Music Choice for your business from one of our commercial music providers, contact the broadband radio network at: 888-266-4229



Proof of Delivery

I hereby certify that on Friday, May 06, 2022, I provided a true and correct copy of the Declaration of Mary Marshall and Exhibits to SoundExchange's Opening Legal Brief Concerning the Meaning of 37 C.F.R. § 384.3(a) to the following:

XM Satellite Radio Inc., represented by R. Bruce Rich, served via Email

Sirius Satellite Radio, represented by Karyn K. Ablin, served via Email

Music Choice, represented by Paul Fakler, served via E-Service at
pfakler@mayerbrown.com

Signed: /s/ Mary Marshall